

1997-239-C

C. DUKES SCOTT
EXECUTIVE DIRECTOR

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DAN F. ARNETT
CHIEF OF STAFF

December 15, 2004

South Carolina Public Service Commission
Post Office Drawer 11649
Columbia, South Carolina 29211

RE: Seeking funds from the Universal Service Fund for the Lifeline Program

Dear Commissioners:

The Office of Regulatory Staff ("ORS") is seeking authorization to utilize Universal Service Fund monies to increase awareness of the state's Lifeline and Link-up programs and to qualify households in the BellSouth territory that are at 125% of poverty level and are eligible to receive the benefits of these services.

Background

Since the inception of the state's Universal Service Fund, there have been provisions for using USF funds in support of the Lifeline and Link-up programs. Specifically, Order No. 2001-996 outlining the guidelines for USF states that an allowable expense of the USF is "the cost of any state mandated support programs for low-income consumers such as Lifeline, as well as any appropriate administrative expenses." (p. 6 of the Guidelines) It also states that "The Commission shall take the necessary steps to maximize the benefit of the FCC's federal Lifeline program for qualified telecommunications customers in the State of South Carolina." (p. 10 of the Guidelines) As responsibility for administering the USF fund shifts to the ORS, it is the desire of the ORS to assist the Commission in maximizing this program through a targeted outreach effort.

In addition, the ORS would like to assist BellSouth in extending this program to those households in the BellSouth territory that are at or below 125% of poverty. Pursuant to the settlement agreement filed May 19, 2004 in the Court of Common Pleas between the Consumer Advocate and BellSouth ("125% Agreement"), see copy attached, BellSouth may provide Lifeline credits to qualifying BellSouth subscribers who are not currently receiving such credits. As per the 125% Agreement, if a designated S.C. state agency confirms to BellSouth those applicants who are end user customers and are at or below 125% of the federal poverty level, those applicants will receive Lifeline credits

against their telephone bills. Currently, only customers who are at or below 100% of the poverty level receive such credits.

BellSouth has proposed that the ORS be designated as the agency to administer the program that will provide credits to additional qualifying consumers. The ORS has agreed to assume the responsibilities of administering this program upon the contingency that the South Carolina Public Service Commission allows funds to be allocated to the ORS from the Universal Service Fund administrative expense component.

Impact on the State

The implementation of the proposed benefits program could have a tremendous, positive effect on the citizens of South Carolina. According to the Budget and Control Board's Office of Research and Statistical Services, the 2000 Census data indicate there are approximately 216,000 households in South Carolina that are at or below the poverty level. At least 30% of these households have elderly residents. Unfortunately, as the Lifeline program currently exists, only about 23,000 households are receiving Lifeline credits from any telecommunications provider. Thus there are approximately 200,000 households who are eligible for the Lifeline program but are not currently receiving its benefits.

The impact of the credit, which is approximately \$13.50/month or \$162/year, could have a positive impact on an elderly family on a fixed income faced with rising medical costs. In addition, it could have a significant impact on the economy of the state. Because only \$3.50 comes from the State USF and the remaining \$10.00 comes from the Federal USF fund, increasing the number of participants in the Lifeline program would increase the amount of Federal USF dollars coming into the state. If the State is successful in increasing the number of participants by 50,000 households, the State would realize an influx of \$6,000,000 annually. If the number of households is increased by 100,000, the State would have an influx of \$12,000,000 into the state's economy.

BellSouth's settlement agreement to expand the Lifeline eligibility to households at 125% of poverty would add to the potential impact of the program. According to the 2000 census there are an additional 74,000 households between 100% and 125% of poverty. At least 10 percent of these households are elderly. Given that BellSouth territory covers approximately 75% of the state, it is safe to assume that 75% of the households between 100% and 125% of poverty are in BellSouth territory. Thus BellSouth's settlement agreement has the potential to impact 55,500 households in the state.

Approach

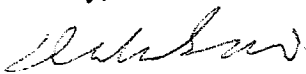
The ORS will take a two-pronged approach to qualifying and educating participants in the Lifeline program. In order to capture those citizens who are not currently receiving Lifeline benefits but are entitled to such, the ORS will implement an outreach campaign. Outreach may include, but is not limited to: brochures, flyers, Public

Service Announcements, and billboards. Annual funding will be needed for a full time employee position in order to administer this part of the program.

Additional funds will be needed for qualifying applicants under the BellSouth agreement. While most participants are deemed eligible based on their participation in AFDC, Medicaid, or other benefit programs, those in the BellSouth 125% agreement would need to be qualified separately. To do this, the ORS would need the support of an additional staff member skilled in dealing with low income applicants. In addition, other start up costs, such as computer time, marketing, and training will be associated with implementing the above stated aspects of the Lifeline program as ordered pursuant to the 125% Agreement. The ORS requests these additional funds from the USF. (See budget attached.)

By allowing the funding for ORS to administer this program, the Commission will in effect create more benefits for South Carolina customers under the Lifeline program, thereby adhering to the USF guidelines. Guidelines Order. Exhibit A, p. 10. We look forward to your expeditious consideration of this request.

Sincerely,



C. Dukes Scott

Attachments

Cc: Mike Couick
State Regulation of Public Utilities Review Committee

Lifeline Budget Proposal

Outreach Coordination

Outreach Manager	\$ 70,000.00
Fringe Benefits	\$ 19,600.00
Contractual Services	\$ 70,000.00
Telephone	\$ 192.00
Computer Services	\$ 3,000.00
Printed Material	\$ 20,000.00
Supplies	\$ 500.00
Travel	\$ 10,000.00
Total Outreach	\$ 193,292.00

Intake Coordination

Intake Coordinator	\$ 38,718.00
Fringe Benefits	\$ 10,841.04
Telephone	\$ 192.00
Computer Services	\$ 3,000.00
Computer Programming	\$ 15,000.00
Supplies	\$ 500.00
Travel	\$ 2,000.00
Total Coordination	\$ 70,251.04

Total	\$ 263,543.04
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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON
) PLEAS
) (NON-JURY)
) Case No. 00-CP-40-2935

Philip S. Porter – Consumer
Advocate For the State of
South Carolina

Petitioner,

vs.

South Carolina Public Service
Commission and BellSouth
Telecommunications, Inc.

Respondents.

ORDER
RECOMMENDING
ACCEPTANCE OF
AGREEMENT

FILED
JUL 19 PM 9:34
CLERK OF COURT
J. SCOTT
G.S.

This matter comes before the Court upon the joint motion of all parties to this proceeding for an Order recommending that the Supreme Court of South Carolina ("Supreme Court") accept a settlement agreement ("Agreement") between the Consumer Advocate for the State of South Carolina ("Consumer Advocate") and BellSouth Telecommunications, Inc. ("BellSouth"). The Court has carefully reviewed and considered the record of this proceeding, the evidence submitted by the parties in support of their motion, and the Agreement. For the reasons set forth below, the Court hereby recommends that the Supreme Court accept the Agreement.

PROCEDURAL HISTORY

This matter is an appeal of the decision of the Public Service Commission of South Carolina ("Commission") to dismiss a Petition by which the Consumer Advocate sought a review of BellSouth's earnings for the calendar years 1996, 1997, and 1998.¹ On January 9, 2004, the Court signed an Order affirming the Commission's decision, and on February 19, 2004, the Court issued an Order denying the Motion of the Consumer Advocate and the South Carolina Cable Television Association ("SCCTA") to alter or amend judgment.

On March 11, 2004 and March 15, 2004 respectively, SCCTA and the Consumer Advocate filed Notices of Appeal of the Court's Orders with the Supreme Court. Subsequently, the Consumer Advocate and BellSouth reached an Agreement which, if approved, will resolve all issues between the Consumer Advocate and BellSouth in this matter.² A copy of this Agreement is attached to this Order as Appendix A. On April 22, 2004, the parties to this proceeding jointly filed a Motion for Remand to Approve Settlement Agreement with the Supreme Court. On May 5, 2004, the Supreme Court entered an Order remanding this matter to this Court "to review the proposed settlement agreement and make a recommendation to [the Supreme] Court as to whether the proposed agreement should be accepted."

On May 12, 2004, the parties filed with this Court a Joint Motion to Recommend Approval of Agreement with supporting documents. On May 19, 2004, the Court held a

¹ The procedural history of this case is set forth in detail in the Order the Court signed on January 9, 2004.

² As addressed below, if the Agreement between BellSouth and the Consumer Advocate is approved, the Commission and the SCCTA will withdraw from this proceeding, thus ending this litigation in its entirety.

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hearing on the Motion during which Counsel for the Parties presented the Motion and responded to questions from the Court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This litigation has been a contingency under which BellSouth has operated since the Consumer Advocate filed its Petition with the Commission in 1999. While this Court has entered Orders affirming the Commission's dismissal of that Petition, these Orders have not brought an end to this litigation. Instead, these Orders have been appealed. If these Orders were to be affirmed, this matter would be concluded and the Consumer Advocate would not be entitled to any of the relief it sought in the Petition it filed with the Commission over four years ago. If, on the other hand, these Orders were to be reversed or modified, these proceedings would, in all likelihood, be remanded to the Commission for extended and costly hearings to review BellSouth's financial performance for the years in question to determine whether there is any factual basis for the Consumer Advocate's allegations of overearnings by BellSouth during that time period, and to determine the extent to which the Consumer Advocate may be entitled to any of the relief it sought in its Petition.

In light of these circumstances, the Consumer Advocate and BellSouth engaged in extensive settlement negotiations following entry of this Court's Orders in these proceedings. Over the course of several weeks, these parties exchanged various proposals for resolving their disputes, and the Consumer Advocate sought and obtained from BellSouth certain information that the Consumer Advocate deemed necessary to enable it to evaluate these various proposals. Both parties were represented by experienced counsel throughout these negotiations. Ultimately, these parties agreed to



resolve their differences through settlement, rather than continuing on a course of costly and potentially protracted litigation during which BellSouth's operations would continue to be subject to substantial uncertainty and consumers would receive no immediate financial benefits.

On April 22, 2004, BellSouth and the Consumer Advocate signed the Agreement now before the Court. In return for the Consumer Advocate's agreement to dismiss this case with prejudice, BellSouth agreed to various measures that will provide the following benefits to South Carolina consumers:

- A. BellSouth's residential customers and the vast majority of BellSouth's business customers will receive a direct, substantial, and immediate financial benefit as a result of this Agreement. During the billing cycle that begins 90 days after the court order approving the Agreement becomes final and non-appealable, BellSouth will apply \$50 million of bill credits that will be distributed equally among BellSouth's South Carolina end-user customers who, at the time the refunds are implemented, subscribe to designated residential and business services. See Agreement at ¶2. These designated services include all of BellSouth's residential lines in the state and the vast majority of BellSouth's business lines in the state.³
- B. BellSouth's customers who subscribe to basic residential lines and basic business lines will receive additional direct benefits for 24 months as a result of this Agreement. Prior to January 1, 2007, BellSouth will not put into effect any increases for its tariffed rates for designated residential and business services (which include basic residential lines and basic business lines). See Agreement at ¶3.⁴
- C.. The possibility that consumers throughout the State will have to pay higher State USF surcharges this year as a result of BellSouth activity is eliminated. BellSouth will withdraw its request for additional funding from the State Universal Service Fund, and BellSouth will not seek any additional funding from the State Universal Service Fund prior to March 15, 2005. See Agreement at ¶4. Accordingly, residential and business customers will not pay an increased surcharge to support this additional

³ Lines that are provided to payphone locations and certain high-capacity business data lines will not receive these credits. All other business lines, including those that provide service to small businesses, will receive these credits.

⁴ This provision effectively extends an existing five year "freeze" that would expire on December 31, 2004 but for this Agreement.



funding (which they would pay if BellSouth's pending request before the Commission were granted).

- D. More low-income subscribers will qualify for credits against their telephone bills. BellSouth will provide Lifeline⁵ credits to its end user customers who are at or below 125% of the federal poverty level if an agency of the State of South Carolina accepts applications from BellSouth end user customers seeking Lifeline credits under this criteria and confirms to BellSouth that such end user customers are actually at or below 125% of the federal poverty level. See Agreement at ¶5.

It is estimated that considered together, these items could save BellSouth customers approximately \$100 million on their telephone bills. The Consumer Advocate and BellSouth, therefore, have negotiated a favorable settlement of this case for BellSouth customers that will bring both immediate and on-going rate benefits for residential, business, and low-income customers.

Additionally, if the Agreement between BellSouth and the Consumer Advocate is approved, the Commission and the SCCTA⁶ will withdraw from this proceeding. If

⁵ Lifeline is a program designed to increase the availability of telecommunications services to low income subscribers by providing a credit to monthly recurring local service for qualifying service. See BellSouth's General Subscriber Service Tariff A3.31.1.A. The total Lifeline monthly credit available to an eligible customer in South Carolina is \$13.50. *Id.*, A3.31.1.C.


⁶ The SCCTA intervened in these proceedings shortly after the Consumer Advocate filed its Petition with the Commission, and has actively participated in every stage of this proceeding. The SCCTA filed various motions and supporting briefs and presented oral argument both before the Commission and before this Court, and it has been designated the primary appellant of this matter by the Supreme Court. After BellSouth and the Consumer Advocate entered the Agreement, the SCCTA and BellSouth entered a separate agreement that provides that upon Court approval of the Agreement between BellSouth and the Consumer Advocate, BellSouth will pay the SCCTA \$3,000,000.00 and the SCCTA will execute an appropriate release and dismiss its appeal. This agreement represents approximately 3% of the overall value of the resolution of this matter. This agreement between BellSouth and the SCCTA was executed after the Supreme Court remanded this matter to this Court. To the extent that this Court's review of this agreement may be of benefit to the Supreme Court, this Court finds that this agreement is consistent with South Carolina law, is in the public interest, and does not violate public policy. Accordingly, the Court hereby recommends that the Supreme Court approve this agreement, a copy of which is attached as Appendix B to this Order.

approved, therefore, the Agreement between the Consumer Advocate and BellSouth will bring an end to this litigation, and this case will be withdrawn and dismissed.

The Supreme Court encourages settlement agreements because they avoid costly litigation and delay in the resolution of disputes. *See Poston v. Barnes*, 363 S.E.2d 888, 890, 294 S.C. 261, 264 (1987). In this case, two competent and sophisticated parties, both of whom were represented by counsel experienced in utility regulation law, negotiated at arms length for several weeks and reached a favorable settlement of this case for BellSouth customers that will bring both immediate and on-going rate benefits for residential, business, and low-income customers. All of the parties to this litigation, including the Commission, support this Agreement and have moved that this Court recommend that the Agreement be accepted by the Supreme Court.

CONCLUSION

Based on the foregoing, the Court finds that the Agreement is consistent with South Carolina law, is in the public interest, and does not violate public policy. Accordingly, the Court hereby recommends that the Supreme Court approve the Agreement.



G. Thomas Cooper, Jr.
Presiding Judge, Fifth Judicial Circuit

May 19, 2004

APPENDIX A

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

AGREEMENT

THIS AGREEMENT is made this 22nd day of April, 2004, by and between the Consumer Advocate of the State of South Carolina ("Consumer Advocate") and BellSouth Telecommunications, Inc. ("BellSouth"), a Georgia Corporation (hereinafter sometimes collectively referred to as the "Parties").

WHEREAS, there is presently pending before the Supreme Court of South Carolina Case No. 2000-CP-40-2935, which is an appeal of Judge G. Thomas Cooper, Jr.'s January 9, 2004 Order affirming Order No. 2000-030 and Order No. 2000-0375 that the Public Service Commission of South Carolina ("Commission") entered in Docket No. 1999-178-C ("the Earnings Review Litigation"); and

WHEREAS the Parties to this Agreement desire to settle all disputes, whether existing or potential, which have or could have been raised between the parties in the Earnings Review Litigation;

NOW THEREFORE THE PARTIES HERETO do hereby covenant and agree as follows:

1. BellSouth and the Consumer Advocate agree that they will submit this Agreement to a Court of competent jurisdiction and that they will jointly request such court to expeditiously enter an Order approving this Agreement. No provision of this Agreement is binding upon either BellSouth or the Consumer Advocate unless and until entry of an Order by such Court approving this Agreement and after all appeals, if any, arising out of such Order have been resolved and such Order has become final and non-appealable. In the event of an appeal of any such Order, the Consumer Advocate and

1 *[Signature]*
[Signature]

BellSouth agree to take whatever steps are deemed necessary in order to obtain any Order necessary to implement the terms of this paragraph.

2. During the billing cycle that begins 90 days after the Order approving this Agreement becomes final and non-appealable in accordance with Paragraph 1 above, BellSouth will refund \$50 million by way of bill credits that will be distributed equally among BellSouth's South Carolina end-user customers who, at the time the refunds are implemented, subscribe to Residence Flat Rated Local Lines (509,911), Residence Measured/Message Rated Local Lines (17,898), Area Plus (25,623), Complete Choice (300,580), Area Plus with Complete Choice (81,086), Business Flat Rated Local Lines (141,790), Business Measured/Message Rated Local Lines (14,740), Business Plus (7,911), Business Complete Choice (41,494), PBX Flat-Rated Local Trunks (10,002), PBX Measured/Message Rated Local Trunks (616), ESSX/CTX/MultiServe Plus Flat Rated Local NARS (18,871), ESSX/CTX/MultiServe Plus Measured/Message Rates Local NARS (681), Residence ISDN Lines (129), Business ISDN Lines (7,621), Primary Rate ISN Lines (57,751), or Miscellaneous Other Lines/Trunks (2,193). For identification purposes, the numbers in parenthesis represent the count of such lines as of December 2003.

3. BellSouth agrees that prior to January 1, 2007, BellSouth will not put into effect any increases for its tariffed rates for any of the following services in South Carolina: residential basic flat rate service ("1FR"), Residential Standard Measured Service Plan ("1MS"), Residential Low Use Measured Plan ("LUM"), Residential Area Plus Service without Complete Choice, business basic flat rate service ("1FB"), Message Rate Service ("1MB"), and Optional Measured Service ("1MG"). The Parties

acknowledge that BellSouth asserts that basic flat rate residential service and certain flat rate business services are currently priced below its cost but agrees to the provisions of this Paragraph as consideration for this Agreement.

4. BellSouth agrees to withdraw the tariff it filed with the Commission on or about September 2, 2003 in Docket No. 97-239-C and to withdraw its associated request for additional funding from the State Universal Service Fund (which is described in the pre-filed testimony submitted by BellSouth witnesses in Docket No. 97-239-C on December 31, 2003 and on January 20, 2004). BellSouth further agrees that it will not seek any additional funding from the State Universal Service Fund prior to March 15, 2005.

5. BellSouth agrees that it will provide Lifeline credits to its end user customers who are at or below 125% of the federal poverty level if an agency of the State of South Carolina accepts applications from BellSouth end user customers seeking Lifeline credits under this criteria and confirms to BellSouth that such end user customers are actually at or below 125% of the federal poverty level.

6. BellSouth agrees that prior to January 1, 2007, it will not seek additional State Universal Service Funding support as a result of having reduced the rates of the 1FR and other named residential services as well as the 1FB and other business services by \$1.00 per month pursuant to the terms of Paragraph 2 of the May 28, 1999 agreement between the Consumer Advocate and BellSouth, as modified by Order No. 1999-411 that the Public Service Commission of South Carolina entered on June 21, 1999 in Docket No. 95-862-C. Any claims that BellSouth might make for support from a Commission-approved State Universal Service Fund shall be calculated for revenue purposes as if such

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\$1.00 per month reductions had not been made. Other than to the extent expressly provided herein, this Agreement shall not affect the determination of the size of the fund, which will continue to be in accord with Section 58-9-280 of the SC Code of Laws and applicable federal law.

7. As consideration for BellSouth's agreements contained in this Agreement, the Consumer Advocate agrees to dismiss with prejudice any and all matters associated with Case No. 2000-CP-40-2935, which is currently pending before the Supreme Court of South Carolina as denoted above, and not to appeal or otherwise challenge any other order arising out of any matter encompassed by this Agreement.

8. The parties agree that each shall have the right and opportunity to review any public announcement or statement made by the other regarding the terms of this agreement. The parties agree that each will provide such review promptly, and will not unreasonably object to any such statement. BellSouth further agrees to notate on its end user customers' bills that contain the refunds referenced in Paragraph 2 above that such refunds are the result of a settlement agreement with the Consumer Advocate.

9. The parties acknowledge and agree that this agreement is the compromise of doubtful and disputed claims and that it shall not be construed as an admission of liability on the part of any party. The parties further acknowledge and agree that this agreement does not establish any precedent with respect to the issues resolved herein, and that the parties will not hereafter in any proceeding contend that any such precedent was established.

10. Should any part of this Agreement not be approved, this Agreement shall be null and void, at the option of either Party, by notifying the other Party in writing


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SC


within 30 days of notice that it has not been approved. Notice should be provided to the persons signing this Agreement or to their successors. The parties acknowledge and agree that if this agreement is not approved in its entirety, the parties reserve all rights to pursue all issues related to the above-referenced proceedings before the appropriate forums. This Agreement shall bind the parties, their successors, and their assigns.

WE SO AGREE:

DEPARTMENT OF CONSUMER
AFFAIRS

BELLSOUTH TELECOMMUNICATIONS,
INC.

By: 
Elliott F. Elam, Jr.
Acting Consumer Advocate

By: 
Patrick W. Turner
General Counsel - South Carolina

DATE: 4/22/04

DATE: 4/22/04

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APPENDIX B



BellSouth Telecommunications, Inc.
Legal Department
1600 Williams Street
Suite 5200
Columbia, SC 29201

Patrick W. Turner
General Counsel - South Carolina

803 401 2900
Fax 803 254 1731

patrick.turner@bellsouth.com

May 11, 2004

Frank R. Ellerbe, III, Esquire
Robinson, McFadden & Moore, P.C.
1901 Main Street
Suite 1200
Columbia, South Carolina 29201

Re: Phillip S. Porter, Consumer Advocate for the State of SC v. SC Public Service
Commission and BellSouth Telecommunications, Inc.
Case No. 2000-CP-40-2935

Dear Frank:

This letter confirms that BellSouth Telecommunications, Inc. (BellSouth) has agreed to pay to the South Carolina Cable Television (SCCTA) the sum of Three Million dollars (\$3,000,000.00) in consideration of its agreement to the settlement of the above captioned case. SCCTA acknowledges that this payment is to be made only if the agreement negotiated between BellSouth and the Consumer Advocate and dated April 22, 2004 is approved and made a final, binding settlement of the above case.

Consistent with this agreement, BellSouth and SCCTA will execute an agreement in which SCCTA fully and completely releases all claims against BellSouth that were asserted or that could have been asserted in the above-referenced action.

Please acknowledge your consent to the terms of this letter agreement by executing where indicated below and returning the original of this letter to me for my files.

Sincerely,

Patrick W. Turner

PWT/nml